

# COMMITTEE REPORT

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## MADAM PRESIDENT:

**The Senate Committee on Judiciary, to which was referred Senate Bill No. 353, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1       Page 1, between the enacting clause and line 1, begin a new
- 2       paragraph and insert:
- 3       "SECTION 1. IC 5-11-5-1 IS AMENDED TO READ AS
- 4       FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Whenever an
- 5       examination is made under this article, a report of the examination
- 6       shall be made. The report must include a list of findings and shall be
- 7       signed and verified by the examiner making the examination. A finding
- 8       that is critical of an examined entity must be based upon one (1) of the
- 9       following:
- 10       (1) Failure of the entity to observe a uniform compliance
- 11       guideline established under IC 5-11-1-24(a).
- 12       (2) Failure of the entity to comply with a specific law.
- 13       A report that includes a finding that is critical of an examined entity
- 14       must designate the uniform compliance guideline or the specific law
- 15       upon which the finding is based. The reports shall immediately be filed
- 16       with the state examiner, and, after inspection of the report, the state
- 17       examiner shall immediately file one (1) copy with the officer or person
- 18       examined, one (1) copy with the auditing department of the
- 19       municipality examined and reported upon, and one (1) copy in an
- 20       electronic format under IC 5-14-6 of the reports of examination of state
- 21       agencies, instrumentalities of the state, and federal funds administered

by the state with the legislative services agency, as staff to the general assembly. Upon filing, the report becomes a part of the public records of the office of the state examiner, of the office or the person examined, of the auditing department of the municipality examined and reported upon, and of the legislative services agency, as staff to the general assembly. A report is open to public inspection at all reasonable times after it is filed. If an examination discloses malfeasance, misfeasance, or nonfeasance in office or of any officer or employee, a copy of the report, signed and verified, shall be placed by the state examiner with the attorney general. The attorney general shall diligently institute and prosecute civil proceedings against the delinquent officer, or upon the officer's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(b) Before an examination report is signed, verified, and filed as required by subsection (a), the officer or the chief executive officer of the state office, municipality, or entity examined must have an opportunity to review the report and to file with the state examiner a written response to that report. If a written response is filed, it becomes a part of the examination report that is signed, verified, and filed as required by subsection (a).

(c) Except as required by subsection (b) **and subsection (d)**, it is unlawful for any deputy examiner, field examiner, or private examiner, before an examination report is made public as provided by this section, to make any disclosure of the result of any examination of any public account, except to the state examiner or if directed to give publicity to the examination report by the state examiner or by any court. If an examination report shows or discloses the commission of a crime by any person, it is the duty of the state examiner to transmit and present the examination report to the grand jury of the county in which the crime was committed at its first session after the making of the examination report and at any subsequent sessions that may be required. The state examiner shall furnish to the grand jury all evidence at the state examiner's command necessary in the investigation and prosecution of the crime.

**(d) If, during an examination under this article, a deputy examiner, field examiner, or private examiner acting as an agent of the state examiner determines that all of the following conditions are satisfied, the deputy examiner shall report the determination to the state examiner:**

**(1) A substantial amount of public funds have been misappropriated, diverted, or are unaccounted for.**

(2) There is a reasonable likelihood that the final report under subsection (a) will include a finding that the entity failed to observe a uniform compliance guideline established under IC 5-11-1-24(a) or a finding that the entity failed to comply with specific law.

(3) The malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation, diversion, or inability to account for the public funds was committed by the officer or employee who is primarily responsible for ensuring compliance with laws regarding maintaining and accounting for the funds.

(e) After receiving a preliminary report under subsection (d), the state examiner shall provide a copy of the report to the attorney general. The attorney general shall diligently institute and prosecute civil proceedings against the delinquent officer or employee, or upon the officer's or employee's official bond, or both, and against any other proper person, that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(f) In an action under subsection (e), the attorney general may attach the defendant's property pursuant to IC 34-25-2.

(g) A preliminary report issued under subsection (d) is not a part of the public records of the state examiner until the final report under subsection (a) is issued, unless the attorney general institutes an action under subsection (e) on the basis of the preliminary report."

Page 2, line 41, delete "must" and insert "may".

Page 3, line 1, after "concluded", insert "subject to subsection (j)".

Page 3, after line 38, begin a new paragraph and insert:

"(j) If, during an examination under this article, a deputy examiner, field examiner, or private examiner acting as an agent of the state examiner determines that all of the following conditions are satisfied, the examiner shall report the determination to the state examiner:

(1) A substantial amount of public funds has been misappropriated or diverted or is unaccounted for.

(2) There is a reasonable likelihood that the final report under subsection (e) or (f) will include a finding that a public contract has not been regularly and lawfully executed and performed or that a public work, building, or structure has not been or is not being performed, built, or constructed in accordance with the terms and provisions of the contract, and

in compliance with the plans and specifications, if any.

(3) The malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for the public funds was committed by the officer or employee who is primarily responsible for ensuring compliance with the terms of the public contract and laws regarding maintaining and accounting for the funds received in connection with a public contract.

(k) After receiving a preliminary report under subsection (j), the state examiner shall provide a copy of the report to the attorney general. The attorney general shall diligently institute and prosecute civil proceedings against the delinquent officer or employee, or upon the officer's or employee's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(l) In an action under subsection (k), the attorney general may attach the defendant's property pursuant to IC 34-25-2.

(m) A preliminary report under subsection (j) is not a part of the public records of the state examiner until the final report under subsection (e) is issued, unless the attorney general institutes an action under subsection (k) on the basis of the preliminary report.

SECTION 3. IC 34-25-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) At or after the time of filing a complaint, the plaintiff may have an attachment against the property of the defendant, in the cases described in subsection (b) and in the manner described in this chapter.

(b) The plaintiff may attach property when the action is for the recovery of money and the defendant:

(1) is, or one (1) of several defendants is, a foreign corporation or a nonresident of Indiana;

(2) is, or one (1) of several defendants is, secretly leaving or has left Indiana with intent to defraud:

(A) the defendant's creditors;

(B) the state;

(C) a municipal corporation;

(D) a political subdivision; or

(E) a school corporation (as defined in IC 20-18-2-16(c));

(3) is concealed so that a summons cannot be served upon the defendant;

(4) is removing or about to remove the defendant's property subject to execution, or a material part of the property, outside

Indiana, not leaving enough behind to satisfy the plaintiff's claim;  
 (5) has sold, conveyed, or otherwise disposed of the defendant's  
 property subject to execution, or permitted the property to be sold  
 with the fraudulent intent to cheat, hinder, or delay:

(A) the defendant's creditors;

(B) the state;

(C) a municipal corporation;

(D) a political subdivision; or

(E) a school corporation (as defined in IC 20-18-2-16(c));

or

(6) is about to sell, convey, or otherwise dispose of the defendant's  
 property subject to execution with the fraudulent intent to cheat,  
 hinder, or delay:

(A) the defendant's creditors;

(B) the state;

(C) a municipal corporation;

(D) a political subdivision; or

(E) a school corporation (as defined in IC 20-18-2-16(c)).

(c) The plaintiff is entitled to an attachment for the causes  
 mentioned in subsection (b)(2), (b)(4), (b)(5), and (b)(6) whether the  
 cause of action is due or not.

SECTION 4. IC 34-25-2-5 IS AMENDED TO READ AS  
 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **Except for actions  
 filed by the attorney general under IC 5-11-5-1 or IC 5-11-6-1**, the  
 plaintiff or a person representing the plaintiff shall execute a written  
 undertaking, with sufficient surety, to be approved by the clerk, payable  
 to the defendant, to the effect that the plaintiff will:

(1) duly prosecute the proceeding in attachment; and

(2) pay all damages that may be sustained by the defendant if the  
 proceedings of the plaintiff are wrongful and oppressive."

Renumber all SECTIONS consecutively.

(Reference is to SB 353 as introduced.)

**and when so amended that said bill do pass .**

Committee Vote: Yeas 5, Nays 1.

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**Senator Bray, Chairperson**